IN THE

Supreme Court of the United States.

OCTOBER TERM, 1900.

No. 176.

EDWARD B. WESLEY

vs.

HOWARD P. ELLIS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO.

WILLIAM A. HARPER,

Appearing as Amicus Curiæ.

BRIEF OF WILLIAM A. BARBER, FILED BY LEAVE OF THE COURT.

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Statement.

Prior to the 16th day of February, 1892, the State of South Carolina was the owner, in fee simple, of the lot and building in the City of Columbia, in said State,

known as "Agricultural Hall." Pursuant to an Act of the General Assembly, previously passed, the Commissioners of the Sinking Fund of said State, on the 2d day of February, 1892, caused said premises to be sold upon terms of one-third of the purchase price in cash and the balance in two equal annual instalments, the deferred payments to be secured by the bond of the purchaser and mortgage of the premises, with option to the obligor to pay the whole or any part of such deferred payments at any time before the maturity thereof.

At this sale, one J. W. Alexander, a citizen of the State of North Carolina, became the purchaser, and it has since developed that he was acting in the interest of Edward B. Wesley, the appellant herein. The cash payment was made and J. W. Alexander delivered to the State Treasurer his bond and mortgage of the premises to secure the deferred payments. Immediately thereafter, he tendered to the State Treasurer the amount of such deferred payments in Revenue Bond Scrip. Recognizing it as invalid and worthless, the State declined to give the purchaser possession of the premises. On the 11th day of February, 1893, J. W. Alexander conveyed the said premises to Edward B. Wesley, in fee simple. Thereupon, on the 13th day of February, 1893, the said Edward B. Wesley filed suit in the Circuit Court of the United States for the District of South Carolina against J. E. Tindal and J. R. Boyles, the custodians of the premises involved, and asked judgment: (1) For possession of said premises; (2) For ten thousand dollars damages; (3) For the value of the use and occupancy of the premises; (4) For costs. After much litigation this Court rendered its decision in the case on the 10th day of May, 1897, awarding possession of the premises to the said Edward B. Wesley (Tindal *et al. vs.* Edward B. Wesley, 167 U. S. 204). Subsequently, an issue was raised by S. W. Vance and decided in favor of Edward B. Wesley by the Circuit Court of Appeals for the Fourth Circuit on

the 1st day of February, 1898 (Vance *vs.* Wesley, 85 Fed. Rep., 157).

When the last-named decision was rendered, the General Assembly of South Carolina was in session and promptly conferred upon the Sinking Fund Commission power to dispose of the bond and mortgage above referred to, so a complete settlement might be made.

This authority was conferred in an act, entitled "An Act to define the rights of the Sinking Fund Commission as to unpaid tax claims, forfeited and other lands in the control of said commission, for the management of the same and the disposition of other assets," approved February 18, 1898. Section XI is as follows:

"The said commission is hereby authorized to make such disposition as it may deem advisable of the bond of J. W. Alexander, and the mortgage on the property in Columbia known as 'Agricultural Hall,' executed to secure the same, which were given to secure the un paid purchase money on said property, and which are now in the hands of the State Treasurer."

Suit had previously been entered on the supersedeas bonds executed in the case of Edward B. Wesley *vs.* J. E. Tindal and J. R. Boyles, and it was desirable to settle these claims, together with the amount alleged to be due for use and occupancy of the premises pending the long litigation. Authority to settle costs and damages resulting from the litigation had been given to the Sinking Fund Commission by a joint resolution, passed March 2d, 1897, and a concurrent resolution passed at the session of 1898. This settlement was agreed upon between the Commissioners of the Sinking Fund and Mr. W. H. Lyles, representing Mr. Wesley on the 12th day of February, 1898, and Mr. Lyles was paid the sum of ten thousand dollars on that date.

The Commissioners of the Sinking Fund met on the 21st day of February, 1898, of which meeting the minutes are as follows:

"COLUMBIA, S. C., Feb. 21, 1898.

The Board of Commissioners of the Sinking Fund met this day at 12 M. in the office of the Secretary of State. Present: W. H. Ellerbe, Governor; W. A. Barber, Attorney-General; J. P. Derham, Comptroller-General; W. H. Timmerman, State Treasurer; J. P. Thomas, Jr., Chr. H. W. & M. Com.; G. L. Buist, Ch. Senate Finance Com.

Upon motion, it was ordered: Pursuant to authority conferred by Section XI of an Act, entitled, "An Act to Define the Rights of the Sinking Fund Commission as to Unpaid Tax Claims, Forfeited and Other Lands, in the Control of the said Commission, and for the Management of the Same, and the Disposition of Other Assets," approved Feby. 18, 1898.

Resolved, That the Commissioners deem it advisable that the Bond of J. W. Alexander, executed on the 2nd day of February, 1892, for the credit portion of the purchase money, for the property in Columbia, known as the "Agricultural Hall," be cancelled and the said property be discharged from the lien of the mortgage executed to secure the same.

Whereupon the Board then signed and executed the instrument, of which the paper pasted below is a true copy:

STATE OF SOUTH CAROLINA:

KNOW ALL MEN BY THESE PRESENTS, That the Commissioners of the Sinking Fund, pursuant to authority conferred by Section XI of an Act entitled, "An Act to define the Rights of the Sinking Fund Commission as to Unpaid Tax Claims, Forfeited and Other Lands in the Control of said Commission, and for the Management of the same, and the Disposition of Other Assets," approved February 18, 1898, and a Resolution this day passed thereunder, hereby cancel the bond of J. W. Alexander, executed on the 2nd day of February, 1892, for the credit portion of the purchase money

for the property in Columbia known as the "Agricultural Hall" and discharge said property from the lien of the mortgages executed to secure the same.

Said Section XI of the Act approved February 18, 1898, reads as follows: That the said Commission is hereby authorized to make such disposition as it may deem advisable of the bond of J. W. Alexander, and the mortgage on the property in Columbia known as the "Agricultural Hall," executed to secure the same, which were given to secure the unpaid purchase money on said property, and which are now in the hands of the State Treasurer.

Witness the hands and seals of the Commissioners of the Sinking Fund this 21st day of February A. D. 1898.

Executed in the presence of:

N. W. BROOKER,
D. H. MEANS.

W. H. ELLERBE, Governor, [L. S.]
W. H. TIMMERMAN, State Treasurer, [L. S.]
GEORGE L. BUIST, Ch. Senate Fin. Com., [L. S.]
J. P. DERHAM, Comptroller-General, [L. S.]
JNO. P. THOMAS, Ch. H. W. & M. Com., [L. S.]
WM. A. BARBER, Attorney-General. [L. S.]

STATE OF SOUTH CAROLINA,
Richland County.

Personally appeared before me N. W. Brooker and made oath: That he saw the within-named W. H. Ellerbe, Governor; W. H. Timmerman, State Treasurer; Geo. L. Buist, Ch. Senate Fin. Com.; J. P. Derham, Comptroller-General; Jno. P. Thomas, Jr., Ch. House W. & M. Com., and Wm. A. Barber, Attorney-General, sign, seal and as their act and deed execute the within

written instrument, and that he with D. H. Means witnessed the execution thereof.

N. W. BROOKER.

Sworn to before me this 21st day of February, 1898.

D. H. MEANS,
Notary Public. [L. S.]

Due notice of this action was given to all parties interested, and the Resolution was recorded in the office R. M. C. for Richland County in R. E. Mortgage Book "AA," page 203. The satisfaction was also entered on the record of the mortgage itself.

Pending this, during the year 1897, it is alleged that Edward B. Wesley entered into a contract for the sale of the "Agricultural Hall" property to Howard P. Eells, a citizen of the State of Ohio. It is, perhaps, significant that in his bill in this case Mr. Wesley alleges the date of this contract as day of , 1897. Speculation as to this lacking date is somewhat relieved by the statement on behalf of Mr. Wesley in opposition to the motion of J. D. M. Shaw for leave to file brief. This statement says that the contract was entered into in October, 1897 (see statement filed January 15th, 1900, page 9).

This suit was filed on the 19th day of January, 1898 (see transcript, fol. 14). The bill had been verified on the 27th day of December, 1897, and on the next day, the 28th, the defendant waived service of process and entered his appearance (see transcript, fol. 13).

Answer was filed February 3, 1898, and replication made on the next day, February 4th (see transcript, fols. 21-23).

On the following day, the 5th of February, counsel for both parties filed a stipulation to submit the case on documentary evidence and written arguments, the same being accompanied by a memorandum of the evidence introduced (see transcript, fol. 51). The transcript

does not show the date on which the case was submitted, but the opinion of the Court was filed on the 14th day of November, 1898 (see transcript, fol. 73).

So far as the record discloses, the Circuit Court was not apprised of the action of the General Assembly and the Commissioners of the Sinking Fund in cancelling and satisfying the mortgage in dispute. In fact, it is tacitly admitted by counsel on both sides in their statements filed in this Court on the 15th of January, 1900, that the Court was permitted to decide their alleged controversy just as if the lien of the mortgage remained intact. Why this course was pursued is a suggestive question. Was it because they questioned the validity of the Act of the General Assembly? Was it that they doubted the effect of the cancellation and satisfaction? Can those who are benefited by an Act question its validity? Is it for Mr. Wesley, whose property was relieved from the lien of the mortgage to dispute the power of satisfaction? Why did Mr. Wesley not suggest the fact of this cancellation and satisfaction to the Circuit Court? Was he really seeking to enforce a contract with Mr. Eells? Was there any ground of controversy between them? Did the Circuit Court decide a real dispute? Is there any practical question before this Court? These seem to be proper questions before reaching the issue intended to be raised by the pleadings.

If all the facts we have recited, showing due cancellation and satisfaction of the mortgage, under express legislative authority to dispose of it, are passed over, and we reach the legal question intended to be made by the pleadings in this case, we must inquire: Is the Revenue Bond Scrip issued under the Act of March 2, 1872, a valid obligation of the State of South Carolina?

It is interesting to study the machinations by which this scrip was issued, and no less interesting to note that at the exact date of its issue, Mr. Wesley's name was prominently associated with the operation of the

legislative mill then engaged in grinding out "obligations of the State of South Carolina."

So far as we know, Mr. Wesley first appeared in South Carolina finances in January, 1872, connected with a scheme to adjust the State debt. Of his plan, "The South Carolinian," a contemporaneous newspaper, said:

"Mr. Wesley's plan assumes that the Scott-Parker statement of the bonded debt of the State is correct, Mr. Wesley's plan is, therefore, based upon that statement. The foundation is defective; and, again, the effect of Mr. Wesley's plan is substantially to cover up the frauds of the Financial Board, and to legalize the present bonds of the ring. The genuine bonds of the State and the fraud bonds are placed on the same footing."

The "Charleston News" about the same time said:

"'No compromise.' A few desperate speculators headed, we presume, by Mr. Wesley, are still struggling to give a spasmodic activity to their scheme for compromising with rascality by scaling the whole State debt, old and new, to fifty and seventy-five per cent. of its face. Neither Conservatives nor Radicals will consent to this precious scheme. The Radicals want to pay the whole debt; the Conservatives desire to pay as much of the debt as may prove to have been legally contracted."

On February 13th, 1872, Senator Nash presented to the General Assembly a petition on behalf of himself and others as owners of State Bonds, asking an issue of registered stock, in lieu of their bonds, at a fixed ratio, and, as we are informed, the first signature to the petition was E. B. Wesley as the owner of $100,000 in bonds of the State of South Carolina.

It is, therefore, error to suppose that Mr. Wesley was not interested in and familiar with South Carolina finances. It is equally erroneous to suppose that he was beguiled into taking the scrip he now holds. Notice

was given through the public prints that the property-owning class of citizens knew the Blue Ridge Railroad scheme was a swindle, but were powerless to prevent it. The first bill introduced in furtherance of it was entitled, "A bill to cancel the liability of the State of the guarantee of the bonds of the Blue Ridge Railroad Company." Portending the introduction of this bill, "The South Carolinian" in its issue of January 25, 1872 asks: "Is it true, as alleged, that the Legislature is to be called upon to assume the debt of the Blue Ridge Railroad Company—amounting to $600,000, so as to leave unencumbered the three and one-third millions of bonds guaranteed by the State? Is it true, as alleged, that the sum of $150,000 more or less is to be used by President Patterson in bribing the Legislature to do his work?"

"The Charleston News" thus commented on the bill: "The new Blue Ridge Bill is even more infamous in character than the telegraphic summary led us to believe. As everyone knows the Blue Ridge Railroad Company is head over ears in debt, and its only marketable assets are $4,000,000 of the bonds of the Company, guaranteed by the State which may be worth five cents on the dollar. Yet the new Blue Ridge Bill proposes: (1) That the State shall pay all the debts of the Company, upon delivery to the State of guaranteed bonds equal in amount to the debts presented for payment: (2) that the debts of the Company may be provided for by a sale of any bonds of the State to any amount; (3) that the debts of the Company may be exchanged for State Bonds at market rates; (4) that an indefinite amount of State bonds may be issued and sold to pay the debts of the Company; (5) that the worthless guaranteed bonds may be converted or funded under any conversion act into direct bonds of the State."

The editor adds: "We undertake to say that a greater swindle was never submitted to the South Carolina Legislature."

This bill was indefinitely postponed apparently only

to make way for a second bill which finally passed and became the Act under which the Scrip in question was issued.

"The South Carolinian" of Feb. 14, 1872, said: "We learn that the second effort of the Blue Ridge ring is likely to succeed. Patterson has been heard to say that the Legislature would have to succumb to him. He knows the power of money. We presume that the corrupt legislative majority yielded to his money. When the Blue Ridge project first originated, we understood that President Patterson proposed to devote a certain sum to the buying up of the legislative money slaves. On yesterday there passed to its second reading a bill to relieve the State of South Carolina of all liability for its guarantee of the bonds of the Blue Ridge Company by providing for the securing and destruction of the same. The bill passed to its second reading by a vote of about 77 to 22. The consensus of opinion is that it involves a huge swindle. It authorizes the issuing of treasury certificates of indebtedness, called "Revenue Bond Scrip" to the extent of $1,800,000. We have not time now to allude to other features, except to remark that provision is made for an annual tax of three mills on the dollar in addition to all other taxes, for the purpose of carrying out this nice job of Patterson & Co.

The $1,800,000 is to be placed at the disposal of the ring.

The bill is called a bill to relieve the State. It might more properly be called a bill to put money in the pockets of the ring."

In both Houses it was openly charged that this bill was being passed by bribery and corruption. Could Mr. Wesley have been ignorant of the doings of the Legislature?

Subsequent events proved that the rumors of bribery were well founded. The Act was passed on March 2nd. Two days later John J. Patterson wrote a letter to the State Treasurer, as follows:

" Vice-President's Office,

GREENVILLE & COLUMBIA RAILROAD COMPANY,

COLUMBIA, S. C. March 4, 1872.

Hon. NILES G. PARKER,
State Treasurer, South Carolina:

Please deliver to H. H. Kimpton 'revenue bond scrip' due the Blue Ridge Railroad Company according to Act passed March 2d, 1872 amounting to one hundred and fourteen thousand two hundred and fifty dollars, at par. upon the following conditions: That forty-two thousand eight hundred and fifty-seven dollars of said scrip, at par, is to be used for paying the expenses of passing through the House of Representatives Bills styled 'A Bill relating to the bonds of the State of South Carolina,' and 'Bill to authorize the Financial Board to settle the accounts of the Financial Agent.' Now, if these above named Bills are passed and become laws, this order for forty-two thousand, eight hundred and fifty-seven dollars in scrip at par, is to be paid said Kimpton; and if not passed, then this order for that amount to be void and the scrip is not to be delivered. Also that seventy-one thousand four hundred and fourteen dollars at par, you shall deliver to said Kimpton if said Bills become laws, and provided that he shall pay the sum of fifty thousand dollars, the proceeds of said scrip at seventy cents on the dollar, in paying the expenses already incurred in passing through the Senate the Bill known as 'A Bill to relieve the State of all liability on account of guaranty of Blue Ridge Railroad Bonds,' &c., passed March 2, 1872, which said expense said Kimpton has contracted to pay; and if said Kimpton fails or refuses to pay said amounts in defraying said expenses (when required by me) then this order to be void. If said conditions are complied with and the amount of scrip delivered to said Kimpton, he is not to be held liable for or to account for its value. The above two

sums of $42,859 and $74,414 in scrip at par, making up the amount of scrip first mentioned in this order.

JOHN J. PATTERSON,
President Blue Ridge Railroad Company in S. C.

Witness:
R. B. ELLIOTT."

The original of this letter was furnished by Niles G. Parker to an investigating committee in 1877. (See Reports and Resolutions of South Carolina, 1877–78, page 1625, *et seq.*)

Such were the history of the times and circumstances of the enactment under which Mr. Wesley's claim arose.

The revenue bond scrip issued under the Act of March 2, 1872, are bills of credit in violation of Article I, Section 10 of the Constitution of the United States.

This section provides: "No State shall enter into any treaty, alliance or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts, or grant any title of nobility."

The earliest definition by this Court of what are "Bills of Credit" within the meaning of the Constitution is found in the decision of Mr. Chief Justice MARSHALL in *Craig et al.* vs. *State of Missouri*, 4th Peters, 410. He says:

"What is a bill of credit? What did the Constitution mean to forbid? In its enlarged, and perhaps in its literal sense, the term 'bill of credit' may comprehend any instrument by which a State engages to

pay money at a future day; thus including a certificate given for money borrowed. But the language of the Constitution itself, and the mischief to be prevented, which we know from the history of our country, equally limit the interpretation of the terms. The word 'emit' is never employed in describing those contracts by which a State binds itself to pay money at a future day for services actually received, or for money borrowed for present use; nor are instruments executed for such purposes in common language, denominated 'bills of credit.' To 'emit bills of credit' conveys to the mind the idea of issuing paper intended to circulate through the community for its ordinary purposes as money, which paper is redeemable at a future day. This is the sense in which the terms have been always understood.

At a very early period of our colonial history the attempt to supply the want of the precious metals by a paper medium was made to a considerable extent, and the bills emitted for this purpose have been frequently denominated bills of credit. During the War of our Revolution we were driven to this expedient, and necessity compelled us to use it to a most fearful extent. The term has acquired no appropriate meaning; and 'bills of credit' signify a paper medium intended to circulate between individuals and between government and individuals, for the ordinary purposes of society. Such a medium has been always liable to considerable fluctuation. Its value is continually changing; and these changes, often great and sudden, expose individuals to immense loss, are the sources of ruinous speculations and destroy all confidence between man and man. To cut up this mischief by the roots, a mischief which was felt through the United States, and which deeply affected the interests and prosperity of all, the people declared in their Constitution that no State should emit bills of credit. If the prohibition means anything, if the words are not empty sounds, it must comprehend the emission of any paper medium

by a State government for the purpose of common circulation."

In the case of *Briscoe* vs. *The Bank of the Commonwealth of Kentucky 11 Peters, 252*, Mr. Justice McLean undertook to reach a more concise definition of the term "bill of credit" as used in the Constitution by applying to the general definition given by Mr. Chief Justice Marshall in *Craig* vs. *Missouri, supra*, the limitations stated by two of the Justices who dissented in that case. He says:

"In the case of *Craig et al.* vs. *The State of Missouri* (4 Peters, 410), this Court was called upon for the first time to determine what constituted a bill of credit, within the meaning of the Constitution. A majority of the Judges in that case, in the language of the Chief Justice, say that bills of credit signify a paper medium intended to circulate between individuals, and between government and individuals, for the ordinary purposes of society."

A definition so general as this would certainly embrace every description of paper which circulates as money.

Two of the dissenting Judges on that occasion gave a more definite, though perhaps a less accurate meaning of the terms bills of credit.

By one of them, it was said, "a bill of credit may, therefore, be considered a bill drawn and resting merely on the credit of the drawer, as contradistinguished from a fund constituted or pledged for the payment of the bill." And, in the opinion of the other, it is said "to constitute a bill of credit, within the meaning of the Constitution, it must be issued by a State, and its circulation as money, enforced by statutory provisions. It must contain a promise of payment by the State generally, when no fund has been appropriated to enable the holder to convert it into money. It must be circulated on the credit of the State; not that it will be paid on presentation, but that the State, at some future

period, on a time fixed or resting in its own discretion, will provide for the payment."

These definitions cover a large class of the bills of credit issued and circulated as money, but there are classes which they do not embrace; and it is believed that no definition short of a description of each class would be entirely free from objection, unless it be in the general terms used by the venerable and lamented Chief Justice.

The definition then which does include all classes of bills of credit emitted by the Colonies or States is a paper issued by the sovereign power, containing a pledge of its faith and designed to circulate as money.

* * * * * * *

To constitute a bill of credit within the Constitution, it must be issued by a State, on the faith of the State, and be designed to circulate as money. It must be a paper which circulates on the credit of the State, and is so received and used in the ordinary business of life."

In Woodruff vs. *Trapnall, 10 Howard, 190, and Darrington* v. *Bank of Alabama, 13 Howard, 12*, Mr. Justice MacLean in each instance delivered the opinion of the Court, affirming his definition of a "bill of credit" in *Briscoe* v. *Bank of the Commonwealth, supra.*

In *Poindexter* v. *Greenhow, 114 U. S., 270.*, the Court through Mr. Justice Matthews said:

"The meaning of the term "bills of credit" as used in the Constitution, has been settled by decisions of this Court. By a sound rule of interpretation it has been construed in the light of the historical circumstances which are known to have led to the adoption of the clause prohibiting their emission by the States, and in view of the great public and private mischiefs experienced during and prior to the War of Independence, in consequence of unrestrained issues by the Colonial and State governments of paper money, based alone upon credit. The definition thus deduced was not

founded on the abstract meaning of the words, so as to include everything in the nature of an obligation to pay money, reposing on the public faith, and subject to future redemption, but was limited to those particular forms of evidences of debt which had been so abused to the detriment of both private and public interests. Accordingly, Chief Justice MARSHALL, in *Craig* v. *Missouri*, *4 Pet.*, *410*, *432*, said that "bills of credit signify a paper medium intended to circulate between individuals and between government and individuals for the ordinary purposes of society." This definition was made more exact by merely expressing, however, its implications in *Briscoe* v. *Bank of Ky.*, *11 Peters*, *257*, *314*, where it was said: "The definition, then, which does include all classes of bills of credit emitted by the colonies or States, is a paper issued by the sovereign power, containing a pledge of its faith and designed to circulate as money." And again (p. 318): "To constitute a bill of credit within the Constitution, it must be issued by a State, on the faith of the State, and be designed to circulate as money. It must be a paper which circulates on the credit of the State and is so received and used in the ordinary business of life." This definition was repeated in *Darrington* v. *Bank of Ala.*, *13 How.*, *12*.

In these cases this Court has furnished an unquestionable standard by which to measure "bills of credit." The Supreme Court of South Carolina has found that the Blue Ridge Scrip now in question meets every requirement of this standard.

Attention is asked to the opinion of Mr. Justice Willard in *State, ex rel. Gary* vs. *Parker, Treasurer, and Dupre* v. *County Treasurers*, reported with *State ex rel. Shiver* v. *Comptroller-General*, 4 S. C., 229.

After stating the definition of "bills of credit" given by this Court, the opinion says:

"It remains then to inquire whether the obligations

contemplated by the Act under consideration are intended to have the following characteristics:

1st. That they are to be issued by a State in its sovereign character.

2nd. That they were to contain a pledge of its faith; and

3rd. That they were intended to circulate as money."

The first and second propositions are settled in the affirmative by the terms of Section 4, which provides, as we know, for a paper to be issued by the State Treasurer, importing to be an obligation on the part of the State to pay a certain sum of money to the bearer. It will, therefore, be necessary only to inquire whether it was the intention of the Act that this paper should circulate as money.

An inquiry of this nature calls into exercise one of the most important and responsible judicial powers incident to a constitutional government. It involves the examination of an Act of the Legislature, with the view of fixing the purpose and intent of the Legislature in the passage of such an Act, not merely as a means of effectuating such purpose and intent of the law-making power by means of the judicial authority, but for the purpose of testing the authority of the law-making power itself in the case, under the supreme law of the land.

The principles that should govern such an inquiry are well illustrated in the case of *Craig* v. *Missouri*, already referred to, and the mode in which they are there applied to a case remarkably similar to the one in hand marks out very clearly the line of inquiry appropriate to be pursued.

To fix this meaning of the term "money" it must be taken in the ordinary sense understood by the community in their mutual dealings. A strenuous attempt was made in the case of *Craig* v. *Missouri* and in

Briscoe v. *Bank* to limit the sense of the term "money" as entering into the question of what constitutes a bill of credit to the legal or technical sense of the term, which embraces only the legal coinage of the Company, and that which is its legal equivalent, or, in other words, is made legal tender; but that line of argument did not prevail.

The question properly stated, is whether a particular obligation is what the community regards and deals with as money. The answer to it is that whatever is current in a form convenient to pass from hand to hand and that may be used to pay debts or purchase commodities is, in this sense, money. It is not essential to such character that tender of payment in such substituted medium should have the force and effect of a legal tender, nor that it should have an actual capacity for paying debts and purchasing commodities equal to that of money possessing intrinsic or legal value. That which passes current as money may be depreciated without losing its character as money, and depreciation necessarily implies a diminished capacity for paying debts and purchasing commodities.

On the other hand it is not enough to characterize an obligation as money merely because certain individuals have found it convenient to use it in place of money in their mutual transactions. There must be a dealing in the medium as money by the community as such, although the extent to which such dealing by the community is carried is, perhaps, unimportant to the question.

There are certain characteristics that tend to adapt a paper expressing a promise to pay money or representing money value, to become current in the community as money. It must be in a form convenient to pass from hand to hand. It must be based either on the credit of a government, a corporation, or an individual, or an association of individuals, or upon a fund pledged and set apart for its redemption. It must either have undoubted credit, such as arises from its ready conver-

tibility into money value, or it must tend to supply some want natural or artificial, of the community in which it is intended for circulation. It must be placed upon the community in quantity or volume sufficient to create an adequate interest and motive to secure its currency; and, finally, it must have a certain denominational character adjusted to the wants of the community in respect to a circulating medium.

An examination of the Act in question will disclose a clear intent to clothe the obligations in question with the attributes fitting them for general circulation as money. These attributes will be considered in the order just stated.

1st. Was it intended that the Revenue Bond Scrip should be issued in a form convenient to pass from hand to hand in ordinary transactions of the community?

Section 3 gives to the scrip the form most usual and convenient to serve as paper money, viz.: that of the usual bank or Treasury note. It is to be printed or engraved on steel in such form and of such denominations as the State Treasurer and the President of the Blue Ridge Railroad Company shall determine. The object of referring this authority as to form and denomination to the Treasurer and the President of the Railroad Company, is obvious. The Treasurer is, by the Act, to receive and pay out from the treasury this scrip as money; and the President of the Railroad Company is to receive the scrip as the representative of his Company, and to realize from its employment, and they are most likely to know what qualities as to form and denomination would have the tendency to give the greatest currency to the scrip at the time of its issue. A certain discretion is left with them for such purpose. While the third section determines what shall be the substantial character of the scrip, as importing a pledge of the public faith and credit, the form of the instrument, as adapting it in external appearance to the common notion of money is left with those most concerned with its currency.

2d. It is to be based by the terms of the Act on the credit of the State government in its sovereign capacity.

3d. The Act attempts to confer upon it not only the full credit capable of being conferred by the use of the full faith and credit of the State, but to create an artificial want in the community, tending to give it currency. In the first place, it is made receivable in payment of taxes and all other dues to the State, except the special tax levied to pay interest on the public debt, (Sec. 3.) Again, it is provided that if any such scrip is received in the Treasury for the payment of taxes, the Treasurer is authorized to pay out the same in satisfaction of any claims against the Treasury except interest that may be due on the public debt (Sec. 5).

These provisions contain two distinct features: The first is a permissive feature affecting each individual in the community who is a tax payer, and supplying to him a motive to become a purchaser of the scrip. A more energetic means of creating an interest and motive in the community to deal with the scrip, as money, could not be offered short of making the scrip compulsory payment of all debts as between individuals. The other feature involves the communication to the scrip of the capacity of performing all the functions of money in all dealings between State and individuals, excepting only the case of the payment of interest on the public debt. This last feature can have no other significance than that of giving currency to the scrip as money.

It will be observed from the language of the 4th Section in which the faith and funds of the State are pledged that such is not in terms that such scrip shall be redeemed by the payment to the bearer on presentation of the amount of money called for by it, but the language is, "that the faith and funds of the State are hereby pledged for the ultimate redemption of said Revenue Bond Scrip."

It is only ultimate redemption, not payment on demand, that is covered by this pledge. What is meant

by ultimate redemption is made clear by the succeeding clauses of that section.

It is provided that a certain tax shall be annually levied for the redemption of the scrip, and it is also provided that the State Treasurer, shall "retire at the end of each year from their date one-fourth of the amount of the treasury scrip hereby authorized to be issued, until all of it shall be retired and to apply to such purpose exclusively the taxes hereby required to be levied." The effect of these provisions is that the holder of the scrip must not look to payment according to the tenor of his scrip, but must seek a market for its circulation under the influence of the pledge of faith and funds for its ultimate redemption. In other words an attempt is made to give currency to the issue, notwithstanding the absence of any intention or ability to redeem according to the tenor of the promise by obtaining a credit with the community for the amount of scrip put in circulation on the strength of certain special provisions and a general pledge of the faith and funds of the State for its ultimate redemption.

4th. The quantity or volume of the contemplated issue is such as tended to create a strong motive and interest in the community to keep the scrip in circulation as money. The amount $1,800,000, as compared with the extent of the commercial transactions of the community on which that amount was intended to be placed, affords the clearest indication of an intention so to affect the interest of the community as to secure its circulation as money. It was to be placed at once in private hands as valid obligations. The various provisions of the Act that looked to a distribution among the people preclude the idea that it was intended that the recipients of this large fund should hold it until redemption, or even that it should be kept together in the hands of a limited number of holders. On the contrary it was clearly intended for dispersion, and the magnitude of the interest in the

hands of the first receivers of the scrip was sufficiently large to warrant the assumption that it would become thus diffused throughout the community.

5th. As it regards its adaptation in respect of denomination, we have already seen that authority was conferred on those most concerned with its circulation, to adapt the issue in that respect to the wants of the community. Such a provision shows additional evidence of an intent that the scrip should circulate as money.

Considering the Act in its entire aspect, as well as its integral parts, it is clear that the Legislature intended that the scrip should circulate as money, and that for this reason the provisions of the Act authorizing the issue of scrip are in conflict with the prohibitions of the Constitution of the United States,as to the emission of bills of credit by States."

This opinion was affirmed by the Supreme Court in *State ex rel. Shiver* v. *Comptroller General, supra* (see 4 S. C., 228). The Court says:

"A careful consideration induced by the large pecuniary interests involved in the question, together with the fact that provisions both of the State and United States Constitutions have been brought into its discussion, has satisfied us that the Act, so far as it authorizes the emission of revenue scrip, is in violation of the clause of the Constitution of the United States already referred to. The argument which holds it valid as a subsisting obligation, and repels the character of a bill of credit, under which it is classed by the respondent, seems to rest upon the fact that it was not designed to circulate as money. The opinion of Mr. Justice Willard in the *State ex rel. Gary* v. *Parker, Treasurer, and Dupre* v. *County Treasurers*, which was brought to our notice in the case before us, and which will be reported with it (*a*) is so full and comprehensive on the point as to leave little space for addition or enlargement. It is not because the paper circulates from hand to hand in a community like money that it is to be

held a bill of credit, nor does the fact of currency so constitute it. A State might well make the coupons attached to its bonds receivable for taxes without subjecting them to the disabilities of bills of credit as used in the Constitution, even although they might readily pass in payment of debts or for the purchase of commodities. The design to create a circulating medium would be wanting. If, however, the intention to create a currency is apparent from the whole scope of the Act, the emission is a bill of credit within the terms of the Constitution. To the many indications in the Act to show the intended design, which have been pointed out in the opinion of Mr. Justice Willard, it might be added that the Revenue Bond Scrip could never have been intended or proposed as a State security for investment, because it bore no interest, and its value consisted in the fact of its ready capacity and facility in supplying all articles necessary for use or consumption. The capacity for circulation and its easy convertibility together with its adaptation to immediate and ready use, would cause a demand for it which a State Bond, although bearing interest, could not command. It is contended that, as this was a provision to meet a debt of the State, the purpose was to furnish a fund for payment and not a circulating medium. But may not the two co-exist? May not the medium of payment be of such kind and character as to create in itself a circulating currency? It is not the end which the assumption is to accomplish, but the mode and manner designed and the use contemplated. The State might issue certificates of indebtedness for the redemption of its bonded debt, but if it did so in the form and manner and design proposed by the Act of March 2, 1872, would they be less obnoxious to the objection urged against the Revenue Bond Scrip, because they were issued to pay or meet a debt. It is not the purpose of the issue which affects the instrument through which it is made, but the characteristics and incidents which attach to it as a provision and recommendation for a circulating medium."

This decision was reaffirmed in *Auditor* v. *Treasurer*, 4 S. C., 311, and the principle announced again in *State* v. *Cardoza, Treasurer*, 5 S. C., 297.

The case of *Poindexter* v. *Greenhow*, *supra*, which was decided by this Court subsequent to the decision by the Supreme Court of South Carolina of the cases just stated, involved the validity of coupons from bonds of the State of Virginia, issued under the Funding Act of March 30, 1871. It was provided that these coupons should "be receivable at and after maturity for all taxes, debts, dues and demands due the State," and that this should be expressed on their face. It was contended that these coupons were "bills of credit." After reaffirming the definitions of that term, the Court said :

"It is very plain to us that the coupons in question are not embraced within these terms. They are not bills of credit in the sense of this constitutional prohibition. They are issued by the State, it is true. They are promises to pay money. Their payment and redemption are based on the credit of the State, but they were not emitted by the State in the sense in which a government emits its treasury notes, or a bank—its bank notes—a circulating medium or paper currency—as a substitute for money. And there is nothing on the face of the instruments nor in their form or nature, nor in the terms of the law which authorize their issue, nor in the circumstances of their creation or use, as shown by the record, on which to found an inference that these coupons were designed to circulate in the common transactions of business, as money, nor that in fact that they were so used. The only feature relied on to show such a design or to prove such a use, is that they are made receivable in payment of taxes and other dues to the State. From this it is argued that they would have obtained such a circulation from hand to hand as money as the demand for them based upon such a quality, would naturally give. But this falls far short of their fitness for general circulation in the community, as a

representative and substitute for money, in the common transactions of business, which is necessary to bring them within the constitutional prohibition against bills of credit. The notes of the Bank of the State of Arkansas, which were the subject of controversy in *Woodruff* v. *Trapnall*, 10 How., 190, were by law receivable by the State in payment of all dues to it, and this circumstance was not supposed to make them bills of credit. It is true, however, that in that case it was held they were not so because they were not issued by the State and in its name, although the entire stock was owned by the State, which furnished the whole capital and was entitled to all the profits. In this case the coupons were issued by the State of Virginia and in its name, and were obligations based on its credit, and which it had agreed, as one mode of redemption, to receive in payment of all dues to itself in the hands of any holder ; but they were not issued as and for money, nor was this quality impressed upon them to fit them for use as money, or with the design to facilitate their circulation as such. It was conferred, as is apparent from all the circumstances of their creation and issue, merely as an assurance by way of contract with the holder, of the certainty of their due redemption in the ordinary transactions between the State Treasury and the tax payers. They do not become receivable in payment of taxes till they are due, and the design, we are bound to presume, was that they would be paid at maturity. This necessarily excludes the idea that they were intended for circulation at all."

From this decision and the preceding cases, we may deduce certain tests by which to determine whether the Revenue Bond Scrip are within the inhibition of Article I, Section 10. These cannot be better stated generally than was indicated by Mr. Justice WILLARD : (1) Were they issued by a State in its sovereign character? (2) Were they based upon the faith and credit of the State? (3) Were they intended to circulate as money?

As to the first two tests there can be no question; nor can investigation furnish but one answer to the last. Just as all the cases suggest the three general questions, so the decision in Poindexter *v.* Greenhow suggests the solution of the third. In that case the Court concluded that the coupons in question were not intended to circulate as money, because such intention was not indicated (*a*) by their face, form or nature; (*b*) by the terms of the law which authorized their issue; or (*c*) by the circumstances of their creation or use as shown by the record. Measure the Revenue Bond Scrip by these tests. His Honor the Circuit Judge did this and says:

"The scrip are on their face bills receivable of the State of South Carolina.

In their form and nature they are like bank and treasury notes. The terms of the law authorizing their issue show that they were intended for circulation between the Government and the people as money by the power given to the State Treasurer and the President of the Railroad Company to fix the amount of the scrip, which power was exercised so as to make the denomination as low as one dollar; by reason of them bearing no interest; by the provision as to the form of the scrip; the great volume of the issue; and the scrip being non-interest bearing, its circulation was necessary to sustain its value.

They could be used for the payment of taxes and other dues to the State from the date of their issue, and before any part of them were required to be redeemed or retired."

So we are left to the primary test of "legislative intention." This must control our conclusion (*Wilkinson* v. *Leland*, *2 Peters*, *627*; *Priestman* v. *United States*, *4 Dall.*, *28*; *United States* v. *Willberger*, *5 Wheat*, *76*; *Binney* v. *Chesapeake & O. Canal Co.*, *8 Pet.*, *214*).

Now let us examine the scrip more particularly with

reference to the "legislative intention" with which they were issued, applying the principles just announced.

(1.) *As to their face, form and nature:* In face and form they are bills receivable of the State of all denominations, and in size strikingly similar to an ordinary bank or treasury note. A *facsimile* of one of the certificates appears in the appendix to this brief and speaks for itself. In nature they are adapted to the performance of every function of money. They are given currency from the very date of their issue by being made receivable from any one in payment of taxes or dues at any time. Their currency is not destroyed by being delivered at the Treasury, but they remain with the Treasurer who is "authorized to pay out such revenue bond scrip in satisfaction of any claims against the Treasury, except for interest that may be due on the public debt." Circulation from citizen to citizen is secured by making them payable to bearer, and pledging the faith of the State for their ultimate redemption. Circulation from citizen to State and again from State to citizen is secured, first by making them receivable for taxes, and then by authorizing the Treasurer to pay them out in satisfaction of debts of the State. Thus, in face, form and nature they fill every requirement of a "paper medium intended to circulate between individuals and between government and individuals for the ordinary purposes of society."

(2.) *As to the terms of the law which authorized their issue*: "Treasury certificates of indebtedness" is the character impressed upon the scrip by the terms of the Act. The words "treasury certificates" in themselves may suggest something intended for currency, but the purpose with which they were issued, rather than the name given them, determines their validity.

Section 3 of the Act stands like a mirror completely reflecting the legislative intention:

"That to carry out the purposes of this Act, the State Treasurer is hereby authorized and required to have printed or engraved on steel, as soon as practicable, treasury certificates of indebtedness, to be known and designated as revenue bond scrip of the State of South Carolina, in such form and of such denomination as may be determined on by the State Treasurer and the President of the Blue Ridge Railroad Company, in South Carolina, to the amount of one million eight hundred thousand dollars, which revenue bond scrip shall be signed by the State Treasurer, and shall express that the sum mentioned therein is due by the State of South Carolina to the bearer thereof, and that the same will be received in payment of taxes and all other dues to the State, except special tax levied to pay interest on the public debt."

An issue of treasury certificates, payable to bearer, in such form and of such denominations as the State Treasurer and the President of the Blue Ridge Railroad Company might determine.

The similitude of these certificates to ordinary bank or treasury notes may result more from its operation than from the express terms of the Act. We are told by this Court that in determining the validity of a statute, we may judge the motives of the legislators by looking beyond the terms of the enactment to its necessary and natural operation (*Soon Hing* v. *Crowley*, *113 U. S., 703*; *Minnesota* v. *Barber*, *136 U. S., 213*).

In the case of *Collins* v. *New Hampshire*, *171 U. S., 30*, *this* Court said:

"The direct and necessary result of a statute must be taken into consideration when deciding as to its validity, even if that result is not in so many words enacted or distinctly provided for. In whatever language a statute may be framed, its purpose must be determined by its natural and reasonable effect."

If the natural result of the operation of the law is a constitutional infringement, it is no less objectionable

than had the violation been expressed in the face of the Act.

Why delegate the power to fix the form and denomination of the scrip, unless it was that they might adjust them to the demands for a circulating medium, the better to serve the purpose of interested parties? How well they were adapted to the uses of money is shown by their form, size and shape and the wide range of denomination in which they were printed. These characteristics are but the natural result of the power and authority given to the State Treasurer and the President of the Railroad Company, and operate as strongly against its validity as if they were expressed in the terms of the enactment.

No record of the scrip was required and none was kept. How much was actually issued and the disposition of much of them, after delivery to the President of the Railroad Company, are matters of conjecture. It is safe to assume that at least $1,800,000 was issued and immediately put into circulation. By the terms of Section 4, the State Treasurer and all other public officers are required to receive the scrip in payment of all dues to the State, except the special tax levied to pay interest on the public debt, while Section 5 completes the scheme to perpetuate their circulation by authorizing the Treasurer to pay them out in satisfaction of ordinary claims against the Treasury.

Conscious that a new circulating medium had been created and in further effort to give it currency, the legislature undertook by Section 9 of the Act, to protect this new money against forgery and counterfeiting. Thus, the succeeding sections of the Act confirm the legislative intention reflected by Section 3. Giving significance and effect to every word and section, they harmonize with the whole enactment and guide us to the intention of the law maker.

Washington Market Co. v. *Hoffman, 101 U. S., 112; Platt* v. *Union Pac. Railroad Company, 99 U. S., 48; Kholsatt* v. *Murphy, 96 U. S., 153.*

(3.) *As to the circumstances of their creation, or use as shown by the record:* The circumstances of their creation are stated by counsel for respondents in *State, ex rel. Shiver* v. *Comptroller-General, 12 S. C., 220*, as follows:

"The statement of facts is very simple, and yet startling. The Legislature has directed the Comptroller-General to endorse in the name of the State, $4,000,000 bonds of the B. R. R. R. Co. This having been done, the Legislature or the Financial Board lends to the B. R. R. R. Co. $220,000 in money and takes a collateral security of $600,000 of said bonds. The B. R. R. R. Co. holds the balance of the bonds. None of these bonds are yet near due; the members of the Financial Board, or their agent, holds a large part as security for the State loan, and the State has a lien on the property of the Company. The Legislature then, at this stage, proceeds to release the B. R. R. R. Co. from liability for $220,000; releases it from the lien held by the State and pays to the B. R. R. R. Co. $1,800,000 in what these appellants are trying to make as good as money; to be let off from a liability contingent and remote in any event, and notoriously fictitious, under the view taken of it, at the time this Act was passed. These bonds could not be sold; they were worth nothing in the market; and had not been sold by the B. R. R. R. Co.; and if any besides the $600,000 held by the State Financial Board were deposited as collateral, the debt they were used to secure did not exceed $300,000."

In Smith v. *Townsend, 148 U. S., 490*, this Court said:

"It is well settled that where the language of a statute is in any manner ambiguous, or the meaning doubtful, resort may be had to the surrounding circumstances, the history of the times, and the defect or mischief which the statute was intended to remedy." * *

And by this Court, in *United States* v. *Union Pac. R. Co.*, 91 U. S., 72, 79, it was said that, "Courts, in

construing a statute, may with propriety recur to the history of the times when it was passed; and this is frequently necessary in order to ascertain the reason as well as the meaning of the particular provisions in it" *Aldridge* v. *Williams*, *46 U. S., 3 How., 24; Preston* v. *Browder*, *14 U. S., Wheat, 120, and Platt* v. *Union Pac. R. Co., 99 U. S., 48, 64.*

The history of the times when they were issued, and the circumstances of their creation show an intention, inspired by bribery, to put in circulation an issue of State-made money sufficient to meet the demands of the Blue Ridge Railroad Company.

Finding the $4,000,000. of bonds issued under the Act of 1868 inadequate to their purpose, the promoters of the scheme proposed the return of those bonds, for which they found no sale, and the issuance of $1,800,000 "treasury certificates" in lieu of them. They needed something that would find easier circulation and more ready use than the bonds. If the bonds would not yield money, the next best thing the pillaging majority in the legislature could give them was something best adapted to the ordinary uses of money. Could they have found anything apparently better suited than the Revenue Bond Script? By an argument of some fifty thousand dollars, expended in bribery, the President of the Blue Ridge Railroad Company and his coadjutors succeeded in convincing the General Assembly that the Scrip should issue, and immediately they used $71,414 to reimburse those who furnished this substantial argument. These are the circumstances of the issue and at least an index to the use of the Scrip.

Thus, when measured by each and every test furnished by the decisions of this Court, the Act of March 2, 1872, indicates an intention that the Revenue Bond Scrip should circulate as money. By its terms and natural operation it contravenes Article I, Section 10 of the Federal Constitution.

The Act of March 2d, 1872, was in violation of the State Constitution of South Carolina.

This proposition has been submitted in every case involving the validity of the scrip, but has never been decided by any Court. It was fully and ably argued by counsel for Respondent in State *Ex Rel.* Shiver *vs.* Comptroller-General, 12 S. C., 185.

We are content to adopt mainly and briefly the line of argument there used.

The theory of the State Constitution of 1868 was that the Legislature is a body possessed of limited powers delegated to it by that Constitution. This theory finds expression in Article I, Section 41 as follows:

"The enumeration of rights in this Constitution shall not be construed to impair or deny others retained by the people, and all powers not herein delegated remain with the people."

The powers delegated to the Legislature to contract debt and levy taxes are definitely fixed, to go beyond which authority was reserved by the people.

The Legislative powers relating to finance and taxation are found in Article IX. Sections 3 and 4 authorize provision for the ordinary expenses of the government, as follows:

"Section 3. The General Assembly shall provide for an annual tax sufficient to defray the estimated expenses of the State for each year; and whenever it shall happen that such ordinary expenses of the State for any year shall exceed the income of the State for such year, the General Assembly shall provide for levying a tax for the ensuing year sufficient with other sources of income to pay the deficiency of the preceding year together with the estimated expenses of the ensuing year.

Section 4. No tax shall be levied except in pursuance

of a law which shall distinctly state the object of the same; to which object such tax shall be applied."

Section 7 provides the method of defraying extraordinary expenditures, as follows:

"Section 7. For the purpose of defraying extraordinary expenditures, the State may contract public debts, but such debts shall be authorized by law for some single object, to be distinctly specified therein; and no such law shall take effect until it shall have been passed by a vote of two-thirds of the members of each branch of the General Assembly, to be recorded by yeas and nays on the Journal of each House respectively; and every such law shall levy a tax annually sufficient to pay the annual interest of such debt."

Section 10 declares where certificates of indebtedness may be issued, as follows:

"Section 10. No scrip, certificate or other evidence of State indebtedness shall be issued except for the redemption of stock, bonds or other evidences of indebtedness previously issued, or for such debts as are expressly authorized in this Constitution."

Section 14 provides for loans, as follows:

"Section 14. Any debt contracted by the State shall be by loan on State bonds of amounts not less than fifty dollars each, on interest payable within twenty years after the final passage of the law authorizing such debt. A correct registry of all bonds shall be kept by the treasurer in numerical order, so as always to exhibit the number and amount unpaid and to whom severally made payable."

It will be observed that upon the power to levy taxes to defray extraordinary expenses, but little restriction is laid, while the power to create a debt for extraordinary expenditures is hedged about by most stringent provisions. The language of Section 7 is as if its authors

foresaw the danger from which the State subsequently suffered.

In this connection we cannot do better than to adopt and quote from the brief of Mr. Pope in *State ex rel. Shiver* v. *Comptroller-General, supra.*

"But when the Constitution is dealing with the power to borrow money, then it puts limitation upon limitation. Great danger was apprehended here and with reason.

1. It is directed that the cause of extraordinary expenditure shall be pointed out.

2. That the Act to become a law shall be passed by a two-thirds vote.

3. That a tax should be at once levied to keep down the interest.

All this appears in the 7th Section of the Ninth Article of the Constitution.

The next thing looked to by the Constitution was to the shape which the debt so contracted should assume. This is pointed out in 14th Section of the same Article. It shall be by bonds and bonds only; not by stock, not by scrip, but by bonds; and these bonds shall not be under a certain sum named, and shall not run longer than twenty years. Each bond shall be numbered and registered and the name of the party to whom the bond is made payable shall be recorded (*Vide* 14 Sec., 9th Art., Con. S. C). The Constitution of 1868 intends that the bonds of the State shall not be hawked about in the stock market.

The next thing that the Constitution looks to is, how the debt thus created and represented by bonds shall be redeemed? This is pointed out in the 10th Section of the same Article, where two things are provided for:

1. The old debts of the State, due before the adoption of the Constitution of 1868. 2. The debts expressly authorized in that Constitution, then under consideration. For the first, scrip may be issued to redeem

them; and for the second, scrip also when the debts created and in the shape of bonds, according to the Constitution, shall become due. If the State finds itself, at the day, not in funds to pay the bonds, and if the holders of the due bonds will not take new bonds issued as for a new debt, to replace the due bonds, then scrip may issue to redeem such due bonds.

In no other way can South Carolina now contract a debt and no scrip can be issued except to redeem such a constitutionally created debt by bond. The Ninth Article of the Constitution is intended to lead to this very result, viz.: To make it difficult for the legislature to involve the State in debt. Give us this Ninth Article of the Constitution of South Carolina in its purity, and we could ask no more. It is absolutely perfect, if enforced, to prevent extravagance and fraud.

Now, was the bond scrip ever a bond created under the limitations of the 7th and 14th Sections of the 9th Article of the Constitution? This will not even be pretended.

Having shown how only a debt can be created, our next duty is to show that no such debt ever existed; and more than that, no debt of any kind ever existed; and more than that, no liability ever existed; and more than that, no contingent liability ever existed on the part of the State. We propose to show that there never was a debt due by the State, at any time, upon which to bottom this revenue bond scrip, authorized (as it is said) by the Act of March 7, 1872.

This involves some reference to the legislation touching the Blue Ridge Railroad:

I.—We will commence with the Act of 1868 (*Vide* Act of that year 15th September, page 25, Sections 1, 2 and 4). That Act contained an express condition that the guaranty by the State of the bonds and the bonds themselves, should issue only in case the Congress of the United States or private capitalists should let the Road have $3,000,000 for $3,000,000 worth of bonds or a less

sum at the same rate ; in other words, every dollar of bonds was to secure and bring in a dollar of money (*Vide* the proviso in the Act). This was a public Act, and this condition went out with the bonds. Trapnel's case is authority on this point.

This Act, we say, created no debt by the State. There was not even a contingent liability until dollar for dollar was realized upon the bonds. Even then there could be no "debt" of the State ; and for the first time, the transaction would assume the shape of conditional liability. The Legislature did not regard the Act of 1868 as creating any debt, because they provided no tax to meet the interest, as they were compelled to do, if the Act created a debt (*Vide* Section 7, Article IX, Constitution 1868).

The bonds were prepared and the State endorsed them. They were useless. The State was a guarantor upon condition. The company could not get one dollar of money for one dollar of bonds. With this condition unperformed, the State could at any time withdraw its conditional accommodation guaranty. When, therefore, the Act of 1872 was proposed to the Legislature, the only place in which these bonds could lawfully and honestly have been was under lock and key in the iron safe of the Blue Ridge Railroad Company. To hypothecate them even would be a fraud upon the State, and an unlawful use of her guaranty."

In 1871 the General Assembly passed an act entitled, "An Act to promote the consolidation of the Greenville and Columbia Railroad Company and the Blue Ridge Railroad Company." Section 6 of this act is as follows :

"The following clause in Section 2 of the Act of September 15, 1868, to authorize additional aid to the Blue Ridge Railroad Company in South Carolina, viz. : 'And further provided, That the said bonds, or any part thereof, shall not be used unless upon the express condition that upon application to the Congress of the

United States or to private capitalists, the amount of $3,000,000 in currency, or so much of that sum as may be necessary, shall be furnished in exchange or upon the security of said bonds,' is hereby repealed."

It was subsequently contended that this section repealed the express condition in the Act of 1868 upon which the State became guarantor of the $4,000,000 of Blue Ridge Railroad bonds. In the case of *Gibbes* v. *Greenville & Columbia Railroad Company*, *13 S. C.*, *228*, the Court held that the Act of 1871 had never gone into effect, using this language:

"It does not appear that this act was ever accepted by the Greenville & Columbia Railroad Company or its creditors, or went into operation in whole or in part. Indeed the contrary appears * * *. The object of the act having failed, each and all of its parts also fail."

Therefore, when the Act of 1872 was passed "To relieve the State of South Carolina of all liability for its guaranty of the bonds of the Blue Ridge Railroad Company," there was no such liability upon which to ground the Act because of the express condition remaining unrepealed in the Act of 1868 with which there was no pretence of compliance.

The issue of $4,000,000 of bonds was illegal, fraudulent and void, and the recital of their existence and the acknowledgment of liability upon them made by the legislature in the Act of 1872 did not and could not validate them. The preamble to that Act shows the artful method of its authors intended to fix a basis for issuing the scrip. But, if the Act of 1868 was invalid, or if its condition had not been fulfilled, the false recital in the Act of 1872 could fasten no liability upon the State, and the scrip was really issued without consideration.

We, therefore, reach the following conclusions:

1. The Act of 1868 as an effort to create a public debt was void, because not passed in accordance with Article IX, Section 7 of the State Constitution.

2. The endorsement of the guaranty of the State upon the bonds of the Blue Ridge Railroad Company, was authorized only upon an express condition which was never complied with.

3. The condition being unfulfilled, the issuance of the bonds was fraudulent and void.

Purchasers of these bonds were bound to take notice of the terms and conditions of the Act under which they purported to be issued. The Act was referred to in the face of the bond. (See transcript, folios 3, 6 and 3.

5. The false recitals in the Act of 1872 did not create a debt or establish previous indebtedness in contemplation of Article IX, Section 10, of the State Constitution.

6. If there was no existing debt, the issue of scrip was unconstitutional and void.

7. The holders of the scrip took it with notice of the failure of the proviso in the Act of 1868; and that the validity of the Act of 1872, under the State Constitution, depended upon compliance with that proviso.

The undoubted connection of Mr. Wesley with State finances in South Carolina about that time would indicate that he had actual as well as constructive knowledge of the circumstances under which the scrip was issued. The face of the bond itself put him on notice of the conditions in the Act of 1868, and the recitals in the Act of 1872 notified him to inquire whether those conditions had been complied with. But the illegal scrip issued for the redemption of the illegal bonds furnished an inviting field for speculation and might have proved profitable had the succeeding legislatures ignored the Constitution.

Conclusion.

It is manifest to us that no real controversy now

exists, or in fact has ever existed, between the parties to this suit. We know from the testimony of Mr. Lyles, in *Tindal et al* v. *Wesley*, *167 U. S.*, *207*, that "Agricultural Hall" was originally purchased with "the sole object" of testing the liability of the State of South Carolina upon the Revenue Bond Scrip. This seems to be equally "the sole object" of the alleged sale to Mr. Eells—of Mr. Wesley's bill for specific performance—of Mr. Eells' acceptance of service and entry of appearance before the bill was filed—of the single issue made by the answer—of the submission of the case under stipulation—of no effort by either party to inform the Circuit Court that the mortgage was duly cancelled and satisfied—of the appeal to this Court, and of the opposition to the motion made on behalf of J. D. M. Shaw for leave to file brief. The intention of these parties to litigate between themselves an alleged liability of the State of South Carolina is no less apparent than the intention of the legislature of 1872 that the Revenue Bond Scrip should circulate as money.

No decision that the Court may render as to the validity of the Scrip, alleged to have been tendered, can affect the respective rights of these parties. The lien of the State upon the property in question has been discharged by legislative authority, and it is now "free from any valid or subsisting lien or encumbrance" regardless of the alleged tender.

The apprehension of appellant's counsel that the cancellation of the mortgage might be "some device which would be afterwards repudiated by legislative authority" is too absurd to need comment. He knows that once acted upon, it could not be repudiated. He also knows that "the dealings of the officers of the State of South Carolina with him" furnish no ground for his suspicion. Does this alleged apprehension furnish an excuse for failure to give the facts to the Circuit Court?

We repeat, Mr. Eells is not interested in the validity or invalidity of the Blue Ridge Bond Scrip, so far as his rights in this case are concerned, and any practical effect that a decision of the question may have will be upon the tax payer in South Carolina. If the issue is decided, he invokes for his protection Article IX of the State Constitution of 1868 and Article I, Section 10 of the Constitution of the United States.

Respectfully submitted,

WILLIAM A. BARBER.

APPENDIX.

FACSIMILE OF REVENUE BOND SCRIP, ISSUED UNDER ACT OF MARCH 2, 1872.

The Blue Ridge Railroad Company was chartered by an Act of the Legislature passed on the 16th day of December, 1852.

12 Stats., 182, Sections 13 and 14 of this Act are as follows :

XIII.—"That the faith and funds of the State of South Carolina, be, and the same are hereby, pledged to secure the punctual payment of any contracts which shall be made for borrowing money by the Blue Ridge Railroad Company in South Carolina, from any person or persons, company or companies, corporation or corporations, to any amount not exceeding one million two hundred and fifty thousand dollars, either in the United States or in Europe, and when such contracts shall be made by bond or bonds signed by the President of said Company, under its seal, and countersigned by the Secretary or Treasurer thereof, it shall be the duty of the Comptroller-General of this State to endorse thereon, that the faith and funds of the State of South Carolina are pledged to the faithful performance of the said contract or contracts, as it respects the punctual payment both of the principal and interest, according to the terms of the said contract or contracts: *Provided*, That the interest to be made payable thereon, shall not exceed six percent per annum, in quarterly or half yearly payments; *And Provided*, also, That the Comptroller-General shall not endorse any such contract or contracts until satisfactory proof is produced to the Governor of the State, or the Comptroller-General, that five hundred thousand dollars are duly subscribed by responsible persons, companies or corporations to the capital stock of the said Blue Ridge Railroad Company in South Carolina; *And Provided, further*, That such endorsement shall not be made until the Governor or Comptroller-General shall have satisfactory proof that such subscriptions have been made, or aid furnished to other railroad companies in North Carolina and Tennessee, designed to connect the said Blue Ridge

Railroad with the Georgia & East Tennessee Railroad, as shall give reasonable assurance of the construction of the said North Carolina and Tennessee Railroads.

XIV.—That as soon as the Comptroller-General shall have made any such endorsement on any such contract, the whole estate, property and funds, within the State, which the said Company may then possess, or shall afterwards acquire, shall thenceforth stand pledged and mortgaged to the State, without any further act or deed on the part of the Company, for the faithful and punctual performance on the part of the said Company, of such contract, in priority and preference of any other debt which the said Company may then or at any other time owe: *Provided*, That nothing herein contained shall be construed to prevent the said Blue Ridge Railroad Company in South Carolina, from applying the proceeds of the loan so made by them, and the instalments which may be called for and paid in, on the stock of the Company, for the purposes of constructing, equipping and working the road, and for no other purpose, except to pay the interest on the said loan or loans, and the ultimate extinguishment of the principal thereof: *And Provided, further*, That so long as no part of the principal of the debt of the Company under the contracts aforesaid, shall be due and unpaid, it shall be lawful for the Company to divide among its stockholders its surplus net income, after payment of the interest due upon its debts: *And Provided, further*, That the Comptroller-General shall not endorse as aforesaid, any such bond or bonds, until the stockholders in the said Company shall have paid in two hundred and fifty thousand dollars, and the same shall have been expended in the construction of the road; whereupon the Comptroller-General shall be authorized to endorse such bonds to an amount not exceeding six hundred and twenty-five thousand dollars, and when two hundred and fifty thousand dollars more shall have been paid in by the stock-

holders, and expended as aforesaid, he shall be authorized to endorse such bonds to the further amount of six hundred and twenty-five thousand dollars: *And Provided, also*, That none of the said bonds endorsed as aforesaid, shall be issued or sold, unless the said Company receive therefor their full par value, and if any bonds so endorsed shall be sold or issued in violation of this condition the endorsement thereon shall be void."

ACT OF DECEMBER 21ST. 1854.

An Act to Authorize Aid to the Blue Ridge Railroad in South Carolina.

I.—Be it enacted by the Senate and House of Representatives now met and sitting in General Assembly, and by the authority of the same, That whenever satisfactory proof is produced to the Comptroller-General, within two years after the passing of this Act, that one million of dollars have been subscribed by responsible persons, companies or corporations, to the capital stock of the Blue Ridge Railroad Company in South Carolina, he is hereby authorized and required to subscribe, on behalf of the State, the sum of five hundred thousand dollars; and when satisfactory proof is produced of a further subscription, by responsible persons, companies or corporations, of five hundred thousand dollars, and also that at least one-fifth of the subscribed capital of the Company is held by responsible individuals or private corporations, then the Comptroller-General is authorized and required to subscribe, on behalf of the State, the further sum of five hundred thousand dollars. And on thus subscribing, the Comptroller-General shall take from said Company certificates of such an amount of shares in said capital stock as the State shall be entitled to by her said subscription.

II.—That the State shall in no way whatever, on account of this subscription, be held liable for debts or contracts, or assessments of the said Railroad Company.

III.—That the State shall have the same rights in the Company and in its management as is reserved to private shareholders; and the General Assembly shall at all times have authority to examine into its condition; and the said Company shall annually submit to the General Assembly a report exhibiting the condition of its affairs and its prospects.

IV.—That the subscriptions shall be paid in the manner and subject to the terms and conditions hereinafter expressed.

V.—That the Governor of the State of South Carolina be, and he is hereby authorized and directed, in the name of the said State, to issue bonds to be countersigned by the Comptroller-General, not exceeding in all the sum of one million dollars, which shall be payable in five instalments of two hundred thousand dollars each, the first instalment to be payable after the expiration of twenty years, and the remaining eight hundred thousand dollars in four equal annual successive instalments thereafter: *Provided*, That the Governor and Comptroller-General may pay for the aforesaid subscriptions in cash, or in the above bonds at par, as they shall deem best: *Provided, also*, That the interest to be paid on such bonds shall not exceed the rate of six per cent. per annum.

VI.—That whenever satisfactory proof shall be produced to the Comptroller-General that the sum of two hundred thousand dollars has been paid in by the shareholders, and expended in the construction of the road, he shall pay to the said Company on behalf of the State, a like sum of two hundred thousand dollars; and

for every like sum so paid in and expended by the shareholders he shall pay to the Company two hundred thousand dollars, and so on until the whole subscription of one million dollars shall be exhausted.

VII.—That the faith and the funds of the State of South Carolina be, and the same are hereby, pledged to secure the punctual payments of any contracts which shall be made for borrowing money by the Blue Ridge Railroad Company in South Carolina, from any person or persons, company or companies, corporation or corporations, to any amount not exceeding one million dollars, either in the United States or in Europe, and when such contracts shall be made by bond or bonds, signed by the President of the Company under its seal, and countersigned by the Secretary or Treasurer thereof, it shall be the duty of the Comptroller-General of this State to endorse thereon that the faith and funds of the State of South Carolina are pledged to the faithful performance of the said contract or contracts, as it respects the punctual payment both of the principal and interest according to the terms of the said contract or contracts: *Provided*, That the interest to be made payable thereon shall not exceed seven per cent. per annum, in quarterly or half yearly payments, and the said bonds so endorsed shall be not sold or issued below the par value thereof, or if so sold or issued below their then par value, the endorsement thereon shall be void: *And Provided, also*, That the Comptroller-General shall not endorse any such contract or contracts until satisfactory proof is produced to the Governor of the State, or the Comptroller-General, that five hundred thousand dollars are duly subscribed by responsible persons, companies or corporations, to the capital stock of the said Blue Ridge Railroad Company in South Carolina: *And provided, further*, That such endorsement shall not be made until the Governor or Comptroller-General shall have satisfactory proof that such sub-

scriptions have been made or aid furnished to other railroad companies in North Carolina and Tennessee, designed to connect the said Blue Ridge Railroad Company with the Georgia and East Tennessee Railroad as shall give reasonable assurance of the construction of the said North Carolina, Georgia and Tennessee Railroads, nor until the said contract or contracts, bond or bonds have been secured by mortgages of the whole estate, property and funds within the State, which the said Company may then possess or shall afterwards acquire, the whole estate, property and funds within the State of Georgia which the Blue Ridge Railroad chartered by the said State of Georgia may then possess, or shall afterwards acquire; the whole estate, property and funds within the State of North Carolina which the Tennessee River Railroad Company, chartered by the said State of North Carolina, may then possess or shall afterwards acquire; and the whole estate, property and funds within the State of Tennessee which the Knoxville & Charleston Railroad Company, chartered by the said State of Tennessee, may then possess or shall afterwards acquire, saving and excepting so much of said estate, property and funds lying within the State of Tennessee as may be subject to the lien now existing in favor of said State, not exceeding the sum of nine hundred thousand dollars, which mortgages may also secure, in equal number and without any priority or preference, other bonds of the said Blue Ridge Railroad Company of South Carolina, not exceeding in the whole two million five hundred thousand dollars: *Provided*, That nothing herein contained shall be construed to prevent any of the said companies from applying any of the proceeds of the loan so made by them, and the instalments which may be called for and paid in on the stock of the said companies for the purpose of constructing, equipping and working their respective roads, and for no other purpose except to pay the interest on the said loan or loans and the ultimate extinguishment

of the principal thereof: *And provided, further*, That so long as no part of the principal of the debt of the company, under the contracts aforesaid, shall be due and unpaid, it shall be lawful for the said company to divide among their respective stockholders their surplus net income after payment of the interest due upon the said debts: *And provided, further*, That the Comptroller-General shall not endorse, as aforesaid, any such bond or bonds until the stockholders in the said Blue Ridge Railroad Company in South Carolina shall have paid in two hundred and fifty thousand dollars, and the same shall have been expended in the construction of their road; whereupon the Comptroller-General shall be authorized to endorse such bonds to an amount not exceeding five hundred thousand dollars; and when two hundred and fifty thousand dollars more shall have been paid in by the stockholders and expended as aforesaid, he shall be authorized to endorse such bonds to the further amount of five hundred thousand dollars.

VIII.—That the thirteenth and fourteenth sections of an act entitled "An Act to incorporate the Blue Ridge Railroad Company in South Carolina" be and the same are hereby repealed.

IX.—That from and after the 21st day of January next, no person shall be President or a Director of the said Blue Ridge Railroad Company in South Carolina who is not the *bona fide* owner, for himself and in his own right of at least five thousand dollars of the capital stock of the said company.

ACT OF DECEMBER 22ND, 1859.

AN ACT TO GRANT AID TO THE BLUE RIDGE RAILROAD.

I.—Be it enacted by the Senate and House of Representatives, now met and sitting in General Assembly,

and by the authority of the same, That the Comptroller-General is hereby authorized and directed to subscribe three hundred and ten thousand dollars to the stock of the Blue Ridge Railroad Company in South Carolina for the purpose of completing the said road to Walhalla: *Provided*, That the aid granted by this Act shall not be construed to exonerate the stockholders from paying up their subscriptions to the capital stock of the said Company, but the Company shall call in and apply the same according to the provisions of their charter.

II.—That the said sum shall be paid to the Company in bonds of the State, payable in five years, at six per cent. interest per annum, to be signed by the Comptroller-General, and issued to the said Company upon the making of the said subscription.

III.—The faith and funds of the State, and more especially the amount now due to this State by the General Government of the United States for various claims on the said United States for revolutionary services and matters growing out of the Florida War, and other matters, through the agent of the State, lately accredited to the said Government, are hereby pledged for the redemption of the principal and interest of the said bonds.

IV.—All the moneys arising from the subscription under this Act shall be applied by the said Company towards completing the road to Walhalla and equipping the same for use.

ACT OF SEPTEMBER 15TH, 1868.

AN ACT TO AUTHORIZE ADDITIONAL AID TO THE BLUE RIDGE RAILROAD COMPANY IN SOUTH CAROLINA.

WHEREAS, the General Assembly of the State of

South Carolina by an Act passed the 21st day of December, in the year of our Lord one thousand eight hundred and fifty-four, and entitled "An Act to authorize aid to the Blue Ridge Railroad Company in South Carolina," *provided*, "that the faith and funds of the State of South Carolina be, and the same are hereby, pledged to secure the punctual payment of any contracts which shall be made for borrowing money by the Blue Ridge Railroad Company in South Carolina, from any person or persons, company or companies, corporation or corporations, to any amount not exceeding one million of dollars, either in the United States or Europe; and when such contracts shall be made by bond or bonds signed by the President of the Company, under its seal, and countersigned by the Secretary or Treasurer thereof, it shall be the duty of the Comptroller-General to endorse thereon that the faith and funds of the State are pledged to the faithful performance of said contract or contracts, as it respects the punctual payment, both of the principal and interest, according to the terms of the said contract or contracts: *Provided*, That certain conditions particularly recited in section seven of said Act be first executed." And the said Blue Ridge Railroad Company in South Carolina secured the said endorsement by a mortgage of all their property in the States of South Carolina, Georgia, North Carolina and Tennessee, duly executed and recorded; and, whereas, the Comptroller-General of the State has not endorsed any of the bonds issued by the said Blue Ridge Railroad Company in South Carolina, under the authority of said Act; and, whereas, the conditions imposed upon said endorsement by said Section seven, have become impossible and injudicious, while the necessity of the completion of the said road has become more urgent in the interest of the State; therefore,

SECTION I. Be it enacted by the Senate and House of Representatives of the State of South Carolina, now met

and sitting in General Assembly, and by the authority of the same, without reference to the said provisions and conditions, whenever any contract or contracts may be made by the President of the said Company under its seal, and as provided by said Act, and not exceeding one million dollars, it shall be the duty of the Comptroller-General to endorse thereon that the faith and funds of the State are pledged to the faithful performance of the said contract or contracts, as respects the punctual payment both of the principal and interest, according to the terms of the said contract or contracts: *Provided*, That so much of said issue as may be necessary, not exceeding three hundred thousand dollars, shall be applied to the redemption of the present bonded debt of the said Company.

SECTION 2. That the faith and funds of the State of South Carolina be, and the same are hereby, pledged to secure the punctual payment of any contracts which shall be made by the Blue Ridge Railroad Company in South Carolina, from any person or persons, corporation or corporations, to an additional amount, not exceeding three million of dollars, either in the United States or Europe; and when such contracts shall be made by bond or bonds, signed by the President of the said Company, under its seal, and countersigned by the Secretary or Treasurer thereof, it shall be the duty of Comptroller-General of this State to endorse thereon that the faith and funds of the State of South Carolina are pledged to the faithful performance of said contract or contracts, as it respects the punctual payment both of the principal and interest, according to the terms of said contract or contracts: *Provided*, That the interest made payable thereon shall not exceed seven per cent. per annum, in quarterly or half yearly payments. And that as soon as the Comptroller-General shall have made any such endorsement on any such contract, the whole estate, property and funds in the State of South Carolina,

Georgia, North Carolina and Tennessee, which said Company may then possess, or shall afterwards acquire, shall thenceforth stand pledged and mortgaged to the State, without any further act or deed on the part of the Company, for the faithful and punctual performance on the part of said Company, of such contract in priority and preference of any other debt which the said company may hereafter create or incur: *And further provided*, That the said bonds or any part thereof shall not be used unless upon the express condition that upon application to the Congress of the United States, or to private capitalists, the amount of three million dollars in currency, or so much of that sum as may be necessary, shall be furnished in exchange or upon the security of said bonds.

SECTION 3. The said company shall have the right to increase the Board of Directors to fifteen members, of which Board the Governor of the State shall be *ex-officio* a member; that there shall be an additional officer to be known as Vice-President, whose duties and salary shall be prescribed by the Board; and that in all future meetings of the stockholders of said company the Governor of the State is hereby authorized to represent the stock of the State, either in person or by the appointment of proxies.

SECTION 4. The Governor of the State is hereby authorized to advance to the said company twenty thousand dollars from the Treasury of the State, to repair and keep in working condition the said road, if such amount should be necessary, in his opinion.

SECTION 5. *Be it further enacted*, That all provisions of the charter of the Blue Ridge Railroad Company, and all Acts or parts of Acts inconsistent with this Act, be, and the same are hereby, repealed.

ACT OF MARCH 2ND 1872.

AN ACT TO RELIEVE THE STATE OF SOUTH CAROLINA OF ALL LIABILITY FOR ITS GUARANTY OF THE BONDS OF THE BLUE RIDGE RAILROAD COMPANY BY PROVIDING FOR THE SECURING AND DESTRUCTION OF THE SAME.

WHEREAS, the State of South Carolina has by and in pursuance of the provisions of an Act approved the fifteenth day of September, A. D. 1868, entitled "An Act to authorize additional aid to the Blue Ridge Railroad Company in South Carolina," indorsed a guaranty of the faith and credit of the State on four millions of dollars of bonds, issued by the said Blue Ridge Railroad Company, comprehending the Blue Ridge Railroad Company in South Carolina; the Blue Ridge Railroad Company in Georgia; the Tennessee River Railroad Company in North Carolina; the Knoxville & Charleston Railroad Company in Tennessee, and the Pendleton Railroad Company in South Carolina, for the purpose of aiding the speedy completion of the said railroad, which bonds are liable for the debts of the said railroad companies; *and whereas*, the present condition of the finances of the State and of said companies are such as to make the further continuance of said bonds on the market inexpedient and unadvisable, and a serious injury and prejudice to the credit of the State; *and whereas*, the existence of the said four million dollars of bonds, so guaranteed, creates a large liability on the part of the State, which the treasurer may be required to meet at unforeseen and inopportune times; *and whereas*, the liability of the State, on account of such guaranty, should be faithfully met and discharged; therefore, in order to secure the recovery and destruction of the bonds and coupons of the said company, issued under and in pursuance of the provisions of the aforesaid act, now pledged in the City of New York and elsewhere, and to relieve the State of all liabilities whatsoever by reason of its endorsement and guaranty of said bonds.

SECTION 1. Be it enacted by the Senate and House of Representatives of the State of South Carolina, now met and sitting in General Assembly, and by authority of the same, that the State Treasurer is hereby directed, with the consent in writing, of the President of the Blue Ridge Railroad Company, in South Carolina, to require the financial agent of the State, in the City of New York, immediately to deliver to the State Treasurer all the bonds of the Blue Ridge Railroad Company, indorsed and guaranteed by the State of South Carolina, which are now in his possession, and held by him as collateral security for advances made by the said financial agent, by the order of the financial board to the Blue Ridge Railroad Company; and upon delivery of said bonds the treasurer is hereby required to cancel the same in the manner hereinafter directed; and the said Blue Ridge Railroad Company shall thereupon be discharged from all liability to the State on account of such advances.

SECTION 2. That upon the surrender by the said Company to the State Treasurer, of the balance of the said four million dollars of bonds, issued by the said Blue Ridge Railroad Company, and guaranteed by the State, the State Treasurer is hereby authorized and required to deliver to the President of the Blue Ridge Railroad Company in South Carolina, treasury certificates of indebtedness (style revenue bond scrip) to the amount of one million eight hundred thousand dollars, the said certificates to be executed in the manner hereinafter directed; and if the said Company shall not be able to deliver all of said bonds at one time, the treasurer is authorized and required to deliver to the said president such amount of treasury certificates as shall be proportioned to the amount of bonds delivered.

SECTION 3. That to carry out the purposes of this Act, the State Treasurer is hereby authorized and required to have printed or engraved on steel, as

soon as practicable, treasury certificates of indebtedness, to be known and designated as revenue bond scrip of the State of South Carolina, in such form and of such denomination as may be determined on by the State Treasurer and the President of the Blue Ridge Railroad Company in South Carolina, to the amount of one million eight hundred thousand dollars; which revenue bond scrip shall be signed by the State Treasurer, and shall express that the sum mentioned therein is due by the State of South Carolina to the bearer thereof, and that the same will be received in payment of taxes and all other dues to the State, except special tax levied to pay interest on the public debt.

SECTION 4. That the faith and funds of the State are hereby pledged for the ultimate redemption of said revenue bond scrip, and the county treasurers are hereby required to receive the same in payment of all taxes levied by the State, except in payment of special taxes levied to pay interest on the public debt; and the State Treasurer and all other public officers are hereby required to receive the same in payment of all dues to the State; and, still further to provide for the redemption of said revenue bond scrip, an annual tax of three mills on the dollar, in addition to all other taxes, on the assessed value of all taxable property in the State, is hereby levied, to be collected in the same manner, and at the same time, as may be provided by law for the levy and collection of the regular annual taxes of the State; and the State Treasurer is hereby required to retire, at the end of each year from their date, one-fourth of the amount of the treasury scrip hereby authorized to be issued until all of it shall be retired, and to apply to such purpose exclusively the taxes hereby required to be levied.

SECTION 5. That if any such revenue bond scrip is received in the treasury for the payment of taxes, the treasurer be, and he is hereby, authorized to pay out such revenue bond scrip in satisfaction of any claim

against the treasury, except for interest that may be due on the public debt.

SECTION 6. That upon the delivery to the State Treasurer of the said guaranteed bonds of the Blue Ridge Railroad Company, or of any part of them, the treasurer is hereby required to cause the same to be cancelled and destroyed, in the presence of the President of the Blue Ridge Railroad Company, in South Carolina, and in the presence of a joint committee of the Senate and House of Representatives of this State, to be for that purpose appointed.

SECTION 7. That whenever the whole number of the said guaranteed bonds shall have been delivered to the treasury as cancelled, as required by the provisions of this Act, the lien of the State of South Carolina upon the estate, property and funds of the said Blue Ridge Railroad Company, in this State, and of the other associated companies in the States of Georgia, North Carolina and Tennessee, as secured by the provisions of an act entitled "An Act to authorize additional aid to the Blue Ridge Railroad Company in South Carolina", passed on the 15th day of September, A. D. one thousand eight hundred and sixty-eight, and all other claims or liens which are held by the State against said Company or Companies, on account of said guaranty, shall from henceforth be forever discharged and released; and should the said company be unable from any cause, to deliver all of said bonds, such liens shall be discharged and released to an extent which shall be proportional to the amount of such bonds actually delivered.

SECTION 8. That if the said Company shall accept the provisions of this Act, it shall be authorized, if the board of directors may desire, to change the corporate name of the Company to that of the Knoxville & South Carolina Railroad Company, and shall have power to extend its railroad, or construct branches thereof, to

any points or places in this State, with all the powers and privileges with which the said company is now vested by the provisions of its charter; and the said company shall have power to issue bonds and to secure the same by a mortgage, to such amount and in such manner as the board of directors may direct. And all sales of stock in the said Blue Ridge Railroad Company, in South Carolina, and its associate companies, formerly held by the State and sold by the Commissioners of the Sinking Fund be, and they are hereby, confirmed.

SECTION 9. That if any person shall forge or counterfeit the treasury scrip hereby authorized to be issued, or shall directly or indirectly aid or assist in the forging or counterfeiting of such scrip, or shall issue, or in any manner use any such forged or counterfeited scrip, he shall, on conviction thereof, be fined in the discretion of the Court, and shall be imprisoned in the penitentiary for a term not exceeding ten years."